



State of Wisconsin / DEPARTMENT OF MILITARY AFFAIRS

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WING-EXA

July 2, 2009

Representative Frederick Kessler
Chair, Assembly Committee on State Affairs and Homeland Security
Room 302 North, P.O. Box 8952, State Capitol
Madison, WI 53708.

Dear Representative Kessler:

First, let me thank all of the members and staff of the Wisconsin Joint Legislative Council and especially the public and legislative members of the Special Committee on Emergency Management and Continuity of Government. All have provided an invaluable service in the review of the role of Wisconsin Emergency Management and in the re-codification process of the current Chapter 166. As always, a special thanks to Senior Staff Attorneys Pam Shannon and Dick Sweet.

Chair Kessler and members of the Committee on State Affairs and Homeland Security we are here today in support of Assembly Bill 316 and AB 319. With me today is Dianne Kleiboer, Wisconsin Emergency Management. We are happy to answer any questions you may have. Thank you.

Larry L. Olson
Executive Assistant

July 2, 2009

Gary Dalton

2656 Lefebvre Avenue
Wauwatosa, WI 53213

Representative Frederick Kessler, Chair
Assembly Committee on State Affairs and Homeland Security

Subject: 2009 Assembly Bill 316

Dear Representative Kessler:

I was honored to be part of the Special Committee on Emergency Management and Continuity of Government. The dedication and breadth of knowledge of all the committee members impressed me. As a Red Cross volunteer in disaster response operations and planning and as an IT professional, I see many improvements in this legislation.

In the areas of general volunteers, health practitioner volunteers, and liability; there was confusion. Confusion on how to best utilize volunteers and how to limit liability. It was also not practical to bring in health practitioner volunteers from other states. This legislation corrects that confusion by more clearly stating liability and separating health practitioner volunteers from general volunteers. This separation seems appropriate in my experience. It also makes needed additions to the health care practitioner definition and makes it practical to use such volunteers from other states.

As our recent experience with H1N1 has shown, the health care community does play a vital role in emergency response. Much of the planning I do is with local health departments and hospital groups. They have covered a lot of ground in recent years but are generally low on staff and would need help were a true disaster event to occur.

Help could be in the form of health practitioner volunteers. When disasters happen, people like to assist as long as it is practical and the cost to themselves is not too high. Previously, it was neither practical nor of reasonable cost for an out of state health practitioner to volunteer. Volunteer health practitioners fill a highly visible role, meet a critical personnel shortfall, and require clear liability protection. Without these volunteers, meeting a health disaster event could severely hamper state and local emergency response.

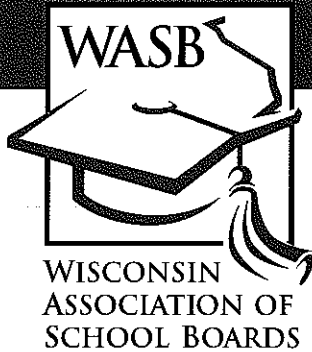
Help could also come by allowing variances to statutes affecting hospitals. Hospitals are required by various statutes and rules to maintain minimum requirements. Some of the requirements, such as room occupancy limits, would hinder an effective response during a large health disaster. Since it is difficult to predict all such disaster events or the hindrances, it is common sense to allow variances to meet the needs of the event. This legislation provides that flexibility.

I am pleased with the work our committee performed and think that the proposed legislation will improve our emergency response capabilities. This is important legislation for our state.

Sincerely

A handwritten signature in cursive script that reads "Gary Dalton".

Gary Dalton
American Red Cross
in Southeastern Wisconsin



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JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Rep. Fred Kessler, Chair, and Members of the
Assembly Committee on State Affairs and Homeland Security

FROM: Sheri Krause, Government Relations Specialist

DATE: July 2, 2009

RE: Assembly Bill 316, related to emergency management

The Wisconsin Association of School Boards (WASB) respectfully requests an amendment to Assembly Bill 316 to address the minimum number of hours of direct pupil instruction required under state statute in the event of an emergency.

The WASB supports the provisions of Assembly Bill 316 which would amend the definition of school day as defined under s. 115.01(10) to include days on which school is closed by order of the state department of health services or the school district administrator because of a threat to the health or safety of pupils or school personnel. By amending this definition, those days will count toward the statutory 180-day requirement.

However, Assembly Bill 316 does not address the related hours of direct pupil instruction as required in s. 121.02(1)(f)(2):

“Annually, schedule at least 437 hours of direct pupil instruction in kindergarten, at least 1,050 hours of direct pupil instruction in grades 1 to 6 and at least 1,137 hours of direct pupil instruction in grades 7 to 12. Scheduled hours under this subdivision include recess and time for pupils to transfer between classes but do not include the lunch period. A school board operating a 4-year-old kindergarten program may use up to 87.5 of the scheduled hours for outreach activities.”

Thus, as the bill is currently written, it would provide only minimal flexibility to school districts in the event of a serious emergency.

The WASB suggests the following language for Section 44 of Assembly Bill 316 to further amend s. 115.01(10):

“The number of hours of direct pupil instruction scheduled for days on which school is closed under paragraph (a) 2 and 3 shall be counted as hours of direct pupil instruction for purposes of s. 121.02(1)(f)2.”

This language would give school districts flexibility in meeting the minimum hour requirements in the event of a school closure ordered by:

- A local health officer;
- The state department of health services; or
- The school district administrator because of a threat to the health or safety of pupils or school personnel.

This language would not give school districts any flexibility in meeting the minimum hour requirements if the school closures were a result of inclement weather or to hold parent-teacher conferences. Current law allows the days that school is closed for those reasons to count towards the 180-day requirement, but districts must still meet the minimum hour requirements. Under the language proposed above, districts would still be required to meet the minimum statutory hour requirements if school was closed due to inclement weather or parent-teacher conferences.

Thank you for your consideration.



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To: Assembly Committee on State Affairs and Homeland Security
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: July 2, 2009
Re: **AB 316, Workers Compensation Coverage and Local Government Liability
for the Actions of Volunteers during Emergencies**

The League of Wisconsin Municipalities is concerned about provisions in AB 316 relating to: 1) making municipalities responsible for providing worker's compensation coverage for registered volunteers; and 2) municipal indemnification of registered volunteers in emergencies. Under the bill, a volunteer (other than emergency volunteer health practitioners) who registers in writing with a local government to provide labor, equipment, materials, the labor of others, or facilities during a disaster is considered an employee of the local government for purposes of workers compensation and any claim relating to the labor, equipment or facilities provided by the volunteer.

With regard to workers compensation, the bill would provide workers compensation insurance (through the municipality) for volunteers that register in writing in advance for help during a disaster or training for a disaster.

We are concerned about the costs this provision could impose on municipalities. The worker's compensation costs for the medical portion (unlimited medicals under workers compensation) could be catastrophic for the municipality and its insurer in the event that a registered volunteer was injured while training for or responding to an emergency. The largest Wisconsin claim for a municipal employee (an EMT) is in excess of \$9 million of which over \$8 million is for medical expenses under workers compensation. The injuries arose from a car accident.

If this provision is not deleted, we predict that few, if any, municipalities will register volunteers under their emergency management program.

We also are concerned about creating new liability for local governments for the acts of registered volunteers during emergencies. We urge the committee to retain current law, which exempts volunteers from liability for negligent acts during a disaster or a declared state of emergency. Volunteer protection from liability already exists under state law (secs. 181.0670 and 166.03(10)) and federal law (42 USC sec. 14051).

Providing volunteers with immunity from liability is consistent with encouraging citizens to step forward in times of crises to assist their fellow citizens without fear of litigation. In times of disaster state law ought to encourage action by protecting volunteers from liability; not inaction through the creation of municipal liability.

If the committee believes it is better public policy to create liability for the negligent acts of volunteers during emergencies, then we urge the committee to treat all volunteers in the same manner that emergency volunteer health practitioners are treated under state law, as agents or employees of the state.

Thanks for considering our comments and concerns.

***REMARKS OF SENATOR BOB JAUCH, CHAIR,
SPECIAL COMMITTEE ON EMERGENCY MANAGEMENT
AND CONTINUITY OF GOVERNMENT***

***TO THE ASSEMBLY COMMITTEE ON
STATE AFFAIRS AND HOMELAND SECURITY***

July 2, 2009

Good morning Chair Kessler and members of the committee. Thank you for the opportunity to submit testimony to you today. During the last legislative interim period and continuing on into this year, I had the privilege of serving as chair of Legislative Council's Special Committee on Emergency Management and Continuity of Government. In addition to the four legislators who served on the committee, the committee included representatives of state, local, and private sector emergency response entities, fire departments, law enforcement, hospitals, and emergency medicine. Representative Ballweg served as Vice-Chair of the committee and she will also present testimony on the proposals from the Legislative Study Committee to you today.

You have before you today three bills and one joint resolution developed through the committee process: AB 316, AB 317, AB 319 and AJR 59. Each of these legislative proposals was approved unanimously by the members of the Legislative Study Committee. Many of the proposals recommended by the committee are proposals that we hope we never have to put to use, including those that deal with legislative continuity in times of disaster. However, one thing that we learned from the recent H1N1 flu outbreak is that advance preparation can mitigate the effects of a disaster and that it is therefore imperative that we be prepared to address worst case scenarios. Both Pam Shannon and Dick Sweet from Legislative Council are here today to assist in answering your questions about the proposals as necessary.

The drafts before you today do the following:

- **AB 316** is the recodification of chapter 166 of the Wisconsin Statutes, which relates to emergency management. The bill moves the provisions into a new chapter of the statutes, reorganizes the chapter, and modernizes the language. Most of the modifications are technical in nature and represent important improvements to the state's system of emergency response. As I mentioned, these provisions were supported by all members of the committee, and received support from the Legislative Council Committee. Department officials are either submitting written testimony or they are here in person to answer any questions the committee may have regarding the recodification. The bill also updates the current statutes on liability for health care providers who volunteer during emergencies, by including health care providers who are not currently covered and by including certain volunteers who are credentialed in other states.
- **AB 317** provides for legislative continuity during times of disaster by requiring legislators to designate emergency interim successors, allowing a house of the Legislature and its committees to conduct a virtual meeting if certain conditions are met during a time of disaster, and allowing the Legislature to provide a process for designating an emergency temporary seat of government. In addition, **AJR 59** recommended by the committee amends the Wisconsin Constitution, which currently requires the Legislature to provide for succession and continuity in periods of emergency resulting from enemy attacks; the draft requires the Legislature to allow for succession and continuity in other emergency situations. Currently, the legislature cannot meet and conduct business anywhere other than the Capitol. Having a plan that provides continuity during times of disaster is a necessity. State agencies and the Governor have plans to meet and operate outside of the Capitol. It is important to recognize that there are certain situations that could result in a non-functioning legislature. The committee made a series of

recommendations and we realize some of the provisions, particularly the line of succession, will generate discussion and it is important that the legislature contemplate the options. I hope that the legislature will move at least some of this bill forward. Some aspects of the bill everyone should agree on. At the very least, it is important that we provide the legislature with the ability to meet and conduct business outside of the Capitol.

- AB 319 would create statutes that govern regional teams established to respond to structural collapse emergencies, similar to the regional teams that we currently use to address hazardous materials emergencies. The bill was brought forth by fire chiefs throughout the state. This bill will allow for a trained force that can respond and be reimbursed for these rare emergency incidences. The committee grappled with the funding aspect of this bill and we recognized that this poses a challenge in the current fiscal environment. This proposal will put the structure for the collapse teams in place and leaves the funding question open.

Thank you for considering these important legislative proposals.

Testimony

To the
Assembly Committee on State Affairs and Homeland Security

2009 Senate Bill 226 and 2009 Assembly Bill 316;
2009 Senate Bill 227 and 2009 Assembly Bill 317;
2009 Senate Bill 229 and 2009 Assembly Bill 319 and
2009 Assembly Joint Resolution 59.

Chairman Kessler and Members of the Assembly Committee on State Affairs and Homeland Security. My name is Kenneth Hartje 1011 W 5th Street, Nekoosa WI. 54457 (715-886-4181) retired Fire Chief City of Nekoosa and Past President of the Wisconsin State Fire Chiefs Association. I appreciate the opportunity to testify today in favor of the Emergency Management and Continuity of Government legislative proposals.

I would like to State my strong support of the recommendations from the Special Committee on Emergency Management and Continuity of Government. As a member of this committee, working with all of the different legislators, emergency responders and hospital personal that made up this Committee I feel that there was a strong group that understands the emergency's and how to deal with any emergency in a responsible manner. There were a good number of people that came and testified also. I feel that the Great State of Wisconsin will be better prepared to handle any emergency with the recommendations from our report to you. There was a great deal of time and discussion on all of the recommendations with the welfare of the people in need, budget, and the safety of the responders taken into consideration.

I feel that there were a good number of services that were not always used in an emergency because the responders did not have any knowledge that this help was there for them. It was also brought out that some of the simple things can be worked out before the emergency happens with a plan ready to go if a big emergency hits. I felt that we were well prepared in the State of Wisconsin and with the recommendations it will be even better for all of us.

In closing I support the legislative proposals from the Legislative Council study committee.

Thank You

Ken Hartje